

David W. Dykhouse ([dwdykhouse@pbwt.com](mailto:dwdykhouse@pbwt.com))  
PATTERSON BELKNAP WEBB & TYLER LLP  
1133 Avenue of the Americas  
New York, New York 10036-6710  
Tel: (212) 336-2000  
Fax: 9212) 336-2222

Thomas J. Flynn ([tflynn@larkinhoffman.com](mailto:tflynn@larkinhoffman.com))  
LARKIN HOFFMAN DALY & LINDGREN, LTD.  
8300 Norman Center Drive, Suite 1000  
Minneapolis, Minnesota 55437-1060  
Tel: (952) 835-3800  
Fax: (952) 896-3333

*Attorneys for MOAC Mall Holdings LLC*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

	)	Chapter 11
In re:	)	Case No. 18-23538 (RDD)
	)	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	)	(Jointly Administered)
	)	
Debtors. <sup>1</sup>	)	

---

**STIPULATION OF FACTS NOT IN DISPUTE  
REGARDING ASSUMPTION AND ASSIGNMENT OF THE MOAC LEASE**

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

The above captioned Debtors, MOAC Mall Holdings LLC (“MOAC” or the “Landlord”), and Transform Holdco LLC (“Transform”, for itself and on behalf of its affiliate Transform Leaseco LLC (“Leaseco”), stipulate to the following facts undisputed for the purposes of the Debtors’ request to assume and assign the lease identified in this matter with Store No. 1722 (the “MOAC Lease”) to Transform Holdco LLC and MOAC’s objections thereto only:

1. The Landlord and the Debtors are parties to that certain lease expiring on August 31, 2022, (as amended and/or modified, the “MOAC Lease” or the “Lease”) of nonresidential real property (the “Premises”) located at Mall of America®, Bloomington, Minnesota (Store No. 1722).
2. The Debtors seeks to assume and assign the MOAC Lease to Transform Leaseco LLC (“Leaseco” or “Assignee”), an affiliate and subsidiary of Transform Holdco LLC (“Holdco,” collectively with Leaseco and all affiliates, “Transform” or “Buyer”).
3. All notices, objections, and responses are timely filed, and the contested issues are properly before the Court and scheduled for an evidentiary hearing on August 22, 2019, except as follows:
  - (a) The Landlord, Debtors, and Buyer reserve all rights and objections with regard to the timeliness of Transform’s objections and responses to the Landlord’s requests for admissions;
  - (b) Buyer and Transform reserve all rights and objections to timeliness and appropriateness of the *MOAC Mall Holdings LLC’s Fourth Supplemental (I) Objections And Reply To Debtor’s Notice Of Assumption And Assignment Of Additional Designatable Leases, And (II) Objection To Debtor’s Stated Cure Amount* [D.I. 4450] (the “Fourth Objection”), which Buyer and Transform

contend was filed out of time and should be struck but which Landlord contends was timely filed; and

- (c) To the extent the Fourth Objection is deemed untimely or inappropriate, Landlord reserves all rights and objections to the timeliness and appropriateness of Transform Holdco LLC's Reply, filed as Docket Number 4454, which Landlord contends was filed out of time and should be struck but which Buyer and Transform contend was timely filed.
4. The deadline for the Debtors to assume or reject the Lease pursuant to Section 365(d)(4) of the Code, as extended by stipulation and Court order, is currently August 31, 2019 (the "Section 365(d)(4) Period").
  5. In addition to any other obligations it may have under the Asset Purchase Agreement, dated as of January 17, 2019, as amended, the Buyer has agreed to bear all occupancy costs relating to the Lease during the period from May 13, 2019 through the current Section 365(d)(4) Period.
  6. Mall of America is a shopping center and the Lease is a shopping center lease pursuant to 11 U.S.C. § 365(b)(3).
  7. Exhibit 1-MOAC is the operative Lease; Exhibit 3-MOAC is an operative addendum to the Lease with regard to the third-floor of the Premises (the "Third Floor Addendum"); and Exhibit 3-MOAC is the operative Amended and Restated Reciprocal Easement and Operating Agreement identified and referenced in the Lease (the "MOAC REA" or the "REA").
  8. Sears, Roebuck and Co. ("Sears Co."), a predecessor-in-interest to the Debtor with regard to the Lease, became the lessee under the Lease effective May 30, 1991.

9. The Debtors and the Buyer contend that the financial condition and operating performance of Sears Co. and its guarantors at the time Sears Co. became lessee under the Lease can be derived from the 10-K for Sears Co. for the fiscal year ending December 31, 1991 (the “Sears 1991 10-K”) (Exhibit 7-MOAC) and the 10-Q for Sears Co. the fiscal quarter ending June 30, 1991 (the “Sears 10-Q 2Q1991”) (Exhibit 8-MOAC).
10. The Buyer contends that the current financial condition and operating performance of the Assignee can be derived from inspection of a confidential letter, dated April 26, 2019 (the “Transform Financials”) (12-MOAC) and the Buyer’s reply, filed as Docket Number 3654 (the “Buyer’s Reply”) (16-MOAC).
11. The Buyer intends to operate with a smaller footprint than the Debtors’ prior to bankruptcy of approximately 425 “go-forward” retail stores.
12. The Buyer does not intend to operate any go-forward stores in the Premises.
13. The Buyer intends to sublease the Premises to one or more non-Buyer tenants.
14. The Buyer has not identified any tenant which will occupy any part of the Premises.
15. The Debtors, with their predecessors-in-interest, operated a Sears-branded retail department store (“Sears”) in all three floors of the Premises until the store was closed in connection with the above captioned bankruptcy.
16. There is currently no retail or other tenant operating any service open to Mall of America customers in the Premises, and the Premises is closed to Mall of America customer traffic.
17. The Landlord’s asserted cure amount for the Lease as of August 22, 2019 is \$699,570.11 plus attorney’s fees and expenses accrued August 1 to 22, 2019. Transform sent a check on May 29, 2019, for \$578,736.39 of this amount, which the Landlord may deposit and apply towards the cure amount without prejudice to its rights or objections to the

assumption and assignment of the Lease and which amount Landlord shall return to Transform, less any occupancy costs related to the Lease during the period from May 13, 2019 through the end Section 365(d)(4) Period, as extended by various stipulations and subject to Transform's reservations of rights with respect thereto as set forth in those stipulations,<sup>2</sup> if Landlord's Objection to assumption and assignment of the Lease to Buyer is granted.

[Remainder of page intentionally left blank.]

---

<sup>2</sup> Sellers, Buyers, and Landlord entered into several stipulations extending the time under 11 U.S.C. § 365(d)(4), which can be located at D.I. Nos. 3823, 4354, and 4687. *See generally* Paragraph 6 to each of D.I. Nos. 4354 and 4687 ("In addition to any other obligations it may have under the Asset Purchase Agreement, dated as of January 17, 2019, as amended, the Buyer agrees to bear all occupancy costs relating to the Lease during the period from May 13, 2019 through the Section 365(d)(4) Period, as extended by this Stipulation and Order. In the event of nonpayment during the Section 365(d)(4) Period, the Landlord's rights and remedies under Bankruptcy Code section 365(d)(3) shall be limited to rights to assert payment from the Buyer, and the Buyer reserves all rights to contest any such claims.").

Dated: August 16, 2019

**WEIL, GOTSHAL & MANGES LLP**

By: /s/ Jacqueline Marcus

Jacqueline Marcus  
767 Fifth Avenue  
New York, MN 10153  
Telephone (212) 310-8000

*Counsel for the Debtors and Debtors-in-Possession*

**DLA PIPER LLP (US)**

By: /s/ R. Craig Martin

Richard A. Chesley  
Rachel Ehrlich Albanese  
R. Craig Martin  
1251 Avenue of the America  
New York, NY 10020  
Telephone: (212) 335-4500

*Counsel for the Buyer*

**LARKIN HOFFMAN**

By: /s/ Thomas J. Flynn

Thomas J. Flynn  
Alex Beeby  
8300 Norman Center Drive  
Suite 1000  
Minneapolis, MN  
Telephone: (952) 896-3362

*Counsel to the Landlord*